

**IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MISSOURI
WESTERN DIVISION**

BUILDING ERECTION SERVICES, INC.,)	
)	
Plaintiff,)	
)	
vs.)	
)	
JLG INDUSTRIES, INC.)	
)	
Defendant/Third-Party Plaintiff)	Case No. 02-6087-CV-SJ-FJG
)	
)	
vs.)	
)	
POWERSCREEN USC, INC. and)	
POWERSCREEN INTERNATIONAL,)	
)	
Third-Party Defendants.)	

ORDER

On November 2, 2006, the Court denied Powerscreen's Motion to Reconsider the Order for Determination of JLG's Indemnity Claim for Attorneys' Fees and Expenses by the Court and Not a Jury. In that Order, the Court stated, "the Court finds that although the issue of whether JLG is entitled to recover attorney fees is a jury issue, the amount of those fees is an issue to be determined by this Court." (Doc. # 287, p. 4). On November 3, 2006, Powerscreen sent a letter to the Court stating that this was a significant clarification and asking for a continuance of the trial.

After reviewing the Order issued on May 18, 2005, the Court recognizes that an error was made in the November 2, 2006 Order. The Court on May 18, 2005, determined that JLG was entitled to recover its attorney fees for the strict liability and failure to warn claims.

The May 18, 2005 Order stated:

As previously discussed, the Court has now determined that JLG is entitled to indemnification for the strict liability and failure to warn claims. Thus, JLG would also be entitled to the cost of defense for these claims, because these types of claims are specifically covered by the Agreement. However, JLG is not entitled to the cost of defense for the other types of claims which are not covered by the Agreement, specifically the negligence, fraud and misrepresentation claims.

(Doc. # 223, p. 9). As the Court has already determined this issue, there is no need to have the jury consider it. Accordingly, no evidence of attorney fees will be presented to the jury during the trial. The Court therefore **DENIES** Powerscreen's request to continue the trial.

Date: November 6, 2006
Kansas City, Missouri

S/ FERNANDO J. GAITAN, JR.
Fernando J. Gaitan, Jr.
United States District Judge